IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WA.No. 1121 of 2006-C

AGAINST THE JUDGEMENT IN WPC.28874/2005 Dated 30/05/2006

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APPELLANT: 5TH RESPONDENT:

T.M. GEORGE THOTUCHALIL,
ARPOOKARA, KOTTAYAM DISTRICT.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS:
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1. T.P. SHAJI, S/O. PAPPACHAN,
THANNIKKUNNEL HOUSE, VILLOONNI P.O.,
ARPOOKARA VILLAGE, KOTTAYAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, DEPARTMENT
OF CO-OPERATION, THIRUVANANTHAPURAM.

3. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOTTAYAM.

4. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (G), KOTTAYAM.

5. THE ARPOOKARA SERVICE
CO-OPERATIVE BANK LTD.NO.1931, VILLOONI P.O.,
ARPOOKARA, KOTTAYAM, REPRESENTED BY ITS
SECRETARY.

BY GOVT.PLEADER MR.BENNY GERVACIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 11-12-2006 ALONG WITH WA NO. 1123 OF 2006 WA NO. 1126 OF 2006 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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W.A.NOS.1121, 1123 & 1126 OF 2006

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DATED THIS THE 11TH DAY OF DECEMBER 2006

JUDGMENT

Abdul Gafoor,J.

All these appeals are filed by an erstwhile employee of a Co-Operative Bank, the 5th respondent in W.A.No.1121/2006. He filed W.P.C.No.37936/2003 claiming salary for the period he was kept under suspension and the period between his dismissal and subsequent reinstatement on the basis of an appellate order. He also filed yet another W.P.(C).30842/2000 challenging Ext.P20 and seeking a direction not to proceed against him by way of yet another

disciplinary action. When the Bank initiated disciplinary action for the second time, he had approached the Registrar and the Government. But neither the Government nor the Registrar interfered with the same. Ext.P20 impugned in W.P.(C).No.30842/2004 is the order of the Government in that regard. His dismissal was set aside in appeal and he was reinstated in service by the Administrator of the Bank who was appointed on supersession of the elected committee. A member of the Bank challenged that reinstatement order before the Registrar invoking Rule 176 of the Kerala Co-Operative Societies Rules (for short ' the Rules') and the Registrar did not interfere. Therefore, an appeal was filed under Section 83(1)(j) of the Kerala Co-Operative Societies Act (hereinafter referred to as 'the Act') before the Government and the

Government dismissed the appeal. It was in the above circumstances that member filed W.P.(C). No.28874/2005 challenging the reinstatement order, Ext.P1, and Ext.P3 and Ext.P5 orders passed by the Registrar and the Government.

2. All these writ petitions were heard together and the learned Single Judge found that as the order of the Registrar, Ext.P1 in W.P.C.No.28874/2005 was passed by the Administrator of the then existing committee and as the supercession and consequent appointment of the Administrator was found to be not justified as per Ext.P8 in W.P.C.No.30842/2004, judgment in O.P.No.9723/2003, the entire action by the Administrator including the reinstatement was bad. The Administrator happened to pass the order of reinstatement, in the event of the Registrar, considering a petition filed by the

appellant, remanding an appeal filed by the appellant to the Managing Board. Therefore, the present Managing Board shall consider the appeal afresh, the learned single Judge directed. With regard to the second disciplinary action, the learned Single Judge found that a charge sheet has already been issued to the appellant and an enquiry officer has been appointed. Therefore, it could not have been interfered with at that stage in a petition under Article 226 of the Constitution of India. It is against this common judgment, these three writ appeals have been filed by the appellant, the erstwhile Secretary of the Bank.

3. Thus the matter relates to (1) the legality or otherwise of the reinstatement ordered by the Administrator setting aside the order of dismissal passed in the first disciplinary action, (2) the

legality of the continuance of the second disciplinary action and (3) if the reinstatement was justified, the entitlement for the salary during the period from the date of suspension until the date of reinstatement.

4. In order to consider these aspects, the chequered history of the case has to be born in mind. When the appellant was functioning as the Secretary of the Co-Operative Society, finding certain irregularities on his part and contemplating disciplinary action, he was placed under suspension by the President of the Bank on 30-10-1998. An enquiry was conducted and finally an order of dismissal was passed on 8-12-2000. The appellant moved an appeal before the Managing Committee and that appeal was dismissed by the Managing Committee on 30-4-

2002. Thereupon the matter was taken up by the appellant, invoking Rule 176 of the Rules before the Joint Registrar. The Joint Registrar allowed his petition and remitted the appeal back to the Managing Board on 4-4-2003. In the meantime, the Managing Board whose president had suspended him and which had rejected his appeal against the dismissal order was superceded by the Registrar of the Co-Operative Societies exercising the power under Section 32 (1) of the Act. This was challenged before this Court in O.P.No.9273/2003 by the President of the Bank representing the members of the superceded committee. In the meantime, the Administrator took charge and based on the remand order passed by the Registrar on 4-4-2003, Ext.P6 in W.P.(C).No.30842/2004, he considered the appeal and the appeal was allowed

on 8-4-2003, setting aside the order of the dismissal and reinstating him in service rescinding the order of suspension. Ext.P7 in W.P.(C).No.30842/2004 is the order of the Administrator. The appellant joined duty on 9-4-2003 consequent on Ext.P7. It was thereafter, O.P.No.9723/2003 was filed challenging the supersession of the Managing Board. It was disposed of as per Ext.P8 judgment dated 27-8-2003 setting aside the order of the supersession and directing the Registrar to restore the superceded Managing Board to power. While passing the said judgment, this Court took note of reinstatement of the appellant in the following lines:

> *It had been suggested by the petitioner that the supersession was at the instance of the 7th respondent, who had been dismissed from service while functioning as the Secretary and*

immediately after the supersession he had been reinstated and is now functioning. But, I am sure hat the restored Committee may not take steps in retaliation, and will refrain themselves from going after the reinstated Secretary. Power has to be used with caution, and not for wrecking vengeance. Nothing is commendable by harassing an employee at the fag end of his career, and the Board should develop a sense of co-operation and trust as they are the basic features of the movement.

5. This makes it clear that this Court had taken note of these aspects and had observed that the Managing Board which had come to the power, should not take retaliatory action in relation to the reinstatement ordered by the Administrator in the meantime. This is a matter thus taken note judicially by this Court and approved with the endorsement that the Managing Board on that score should not take

any further action against him. But, at the same time, it did not preclude the Managing Board if there was reason to proceed against him on any other misconduct noticed or found.

6. When this Court had thus endorsed the reinstatement in Ext.P7 order, even the Managing Board themselves nay an individual member could not have represented before the Registrar or even the Government to pass any order of reversal of such reinstatement. Therefore, irrespective of the question whether an individual member has locus standi or not to invoke Rule 176 of the Co-Operative Societies Rules to rescind a resolution regarding the disciplinary action against a member of the staff of the Bank, the challenge against Ext.P7 ought not to have succeeded before any authorities. Necessarily W.P.C.No.28874/2005 could not have

produced any result in quashing Ext.P7 marked in W.P.C.No.30842/2004, which is Ext.P1 in W.P.C.No.28874/2005.

7. Thus when Ext.P7 reinstatement order endorsed in Ext.P8 judgment stands and cannot be altered there arises no question of considering the appeal again by the Managing Board as directed in the impugned judgment. While passing the impugned judgment, the learned Single Judge did not take note of the impact of Ext.P8 judgment whereby Ext.P7 reinstatement ordered by the Administrator had been tacitly approved. Necessarily the direction contained in the impugned judgment enabling the Managing Board to consider the appeal remanded as per Ext.P6 afresh cannot stand. That direction therefore stands set aside.

8. Now we will come to the second

disciplinary action initiated against the appellant. The managing Board was perfectly competent notwithstanding Ext.P8 or any other judgment to proceed against the appellant on any other misconduct. That power of the Managing Board cannot be interfered with by any authority because the Managing Board had the responsibility to maintain the discipline and curb indiscipline. In all respect, the 2nd charge sheet issued against the appellant was perfectly justified. The Government and the Registrar were also justified in not interfering with the 2nd disciplinary action. Necessarily W.P.C.No.30842/2004 could not have produced a better result for the appellant. But it is a fact that before finalisation of the said disciplinary action, the appellant had retired from service on superannuation on 30-11-2004. No provision in the Act or Rules has been brought to

our notice enabling the Managing Board to continue the disciplinary action against a retired employee. On retirement, the master and servant relationship stands terminated. No statutory fictitious continuance in service is allowed for the purpose of continuing the disciplinary action the Act or Rules. Therefore, there is no question of continuance of the second disciplinary action notwithstanding the competence of the Board to initiate it. The second finding in the impugned judgment also cannot work out because of the retirement of the appellant from service on superannuation.

9. The next aspect is emoluments payable to the appellant during the period he was out of service either due to suspension or due to dismissal . It is revealed from Ext.P24 that no order has been passed by any authority

regularizing the period of suspension or the period during which the appellant had been out of duty. This aspect has to be considered by one or the other authority. The primary authority to consider regularisation of the period of suspension or the period between the date of dismissal and reinstatement is the appointing authority which placed him under suspension or passed the dismissal order. Necessarily the appointing authority is liable to consider these aspects. In this regard the appellant shall make a representation to the appointing authority within a period of two weeks and the appointing authority shall consider the matter after rendering an opportunity of being heard to the appellant at any rate within six weeks from the date of submitting of the representation.

The impugned judgment is thus set aside and the appeals are allowed partly as mentioned above.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

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P.S.TO JUDGE